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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )

Petition of the )

Connecticut Department of Public )

Utility Control for Rulemaking )

DA 98-743

RM No. 9258

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REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T WIRELESS SERVICES, INC.

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**REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.**

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits its reply comments on the Petition for Rulemaking ("Petition") filed by the Connecticut Department of Public Utility Control ("DPUC") in the above-captioned proceeding.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

The vast majority of commenters oppose the DPUC's discriminatory proposal to establish a wireless-only area code overlay on the ground that it would unduly and unfairly burden wireless customers and providers, retard future competition between wireless and wireline services, and undermine Congress's goals of establishing a uniform and nationwide system of numbering administration. The parties urging the Commission to reject the Petition -- cellular and personal communications services ("PCS") providers, paging carriers, SMR providers, interexchange carriers, incumbent local exchange carriers ("ILECs"), the United States Telephone Association, and competitive LECs ("CLECs") -- span the telecommunications industry. This widespread opposition wholly undercuts the assertion of the DPUC and its few proponents that there is a groundswell of support for service-specific overlays. Indeed, there

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<sup>1</sup> See Public Notice, Connecticut Department of Public Utility Control Files Petition for Rulemaking, Public Comment Invited, DA 98-743, RM No. 9258 (rel. April 17, 1998).

does not appear to be enthusiasm for the DPUC's plan from providers or their customers in any industry sector.<sup>2</sup>

The three commenters that support the DPUC's Petition fail to address the legitimate anticompetitive and equity concerns raised by wireless-only overlays and instead focus on the lack of current competition between CMRS and landline service and the purported consumer demand for such relief plans. In their view, discrimination is justified if it would extend the life of existing area codes, even if for a very short time. Congress, however, has given the Commission the obligation to ensure that local political concerns do not result in balkanized and inequitable numbering administration. The Commission should not abandon its long-held position that service-specific overlays are unlawful and contrary to the public interest.

#### **I. THE DPUC AND ITS PROPONENTS DO NOT CORRECTLY ANALYZE THE BASIS FOR THE COMMISSION'S PROHIBITION AGAINST WIRELESS-ONLY OVERLAYS**

The commenters that support the DPUC's Petition contend that the Commission's existing policy regarding wireless-only overlays is inapplicable if the services in question are not currently direct competitors. The Ad Hoc Telecommunications Users Committee ("Ad Hoc Committee"), for example, states that "wireline and wireless services do not presently compete,

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<sup>2</sup> This lack of backing for service-specific overlays was echoed in a recent Colorado case. There, the parties were presented with a choice between a wireless-only overlay and an all-services overlay and all parties, including every wireless carrier in the state, three CLECs and the ILEC, as well as the Colorado commission staff and the Colorado Office of Consumer Counsel, soundly rejected the wireless-only overlay option. In the Matter of the Application and Final Recommendation of the Numbering plan Administrator for relief of the 303 Area Code, Docket No. 97A-103T, Before the Public Utilities Commission of the State of Colorado ("Colorado 303 Area Code Relief Case"), Statement of Position of the Colorado Office of Consumer Counsel; Trial Staff's Statement of Position; U S West Communications, Inc. and U S West Wireless, LLC, d/b/a/ Access2, Statement of Position; Statement of Position of AirTouch Cellular; Statement of Position the City and County of Denver; Statement of Position of MCI Telecommunications Corporation; Post-hearing Statement of Position of AT&T Wireless Services and AT&T Communications; TCG's Joinder in the Post-Hearing Statement of Position

and wireless services are not competitively disadvantaged by being assigned to separate area codes.”<sup>3</sup> Similarly, the Public Utility Commission of Texas (“Texas PUC”) argues that “[e]xclusion and segregation are unduly discriminatory only if wireline and wireless carriers directly compete for market share.”<sup>4</sup>

As a threshold matter, with the exception of BellSouth, none of the anti-wireless overlay commenters suggests that competition between wireless and wireline services is currently flourishing.<sup>5</sup> While AT&T wishes that BellSouth’s rosy depiction of the wireless industry were accurate, its arguments clearly are aimed at garnering support for its bid to enter the long-distance business, and largely parrot arguments it offered in its recent section 271 application for Louisiana -- which the Commission correctly rejected. As AT&T showed in its comments on the BellSouth Louisiana application, wireless services do not currently constrain the market power of ILEC wireline monopolists in any way.<sup>6</sup> The Ad Hoc Committee is correct that, for the time being, “[w]ireline service remains entrenched as the technology of choice for geographically fixed telecommunications services.”<sup>7</sup>

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filed by AT&T Wireless and AT&T; Joint Statement of Position of Sprint PCS and Western Wireless Corporation.

<sup>3</sup> Comments of the Ad Hoc Telecommunications Users Committee at 3 (May 7, 1998) (“Ad Hoc Committee Comments”).

<sup>4</sup> Comments of the Public Utility Commission of Texas at 4 (May 7, 1998) (“Texas PUC Comments”).

<sup>5</sup> See Comments of BellSouth Corporation at 1-3 (May 7, 1998).

<sup>6</sup> See Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231, Comments of AT&T Corp. in Opposition to BellSouth’s Section 271 Application for Louisiana (filed Nov. 25, 1997), and Exhibit F thereto, Affidavit of Jordan Roderick on Behalf of AT&T Corp. (dated Nov. 21, 1997); Reply Comments of AT&T Corp. in Opposition to BellSouth’s Section 271 Application for Louisiana (filed Dec. 19, 1997). These pleadings are incorporated by this reference into these comments.

<sup>7</sup> Ad Hoc Committee Comments at 2.

The current state of wireless/wireline competition, however, was not one of the grounds for the Commission's prohibition of wireless overlays in the Local Competition Second Report and Order,<sup>8</sup> and accordingly has no bearing on its consideration of the DPUC's petition. The Commission has long attempted to foster competition between wireless and wireline services and there is no question that this objective will be realized as the technology develops and wireless prices decrease. Consumers clearly are looking for an alternative to the "entrenched" services of incumbent LECs and wireless is likely to become "the technology of choice" in the future.<sup>9</sup> In prohibiting service-specific overlays, the Commission was concerned with the ability of carriers to compete and it recognized that unless wireless providers have access to the same numbering resources (including the same area codes) as wireline providers, that competition will not emerge. Contrary to the statements of the Ad Hoc Committee, the Texas PUC, and the State Advocates,<sup>10</sup> there has been no material change in circumstances since the Commission first adopted the wireless overlay prohibition. If anything, the case for safeguarding against discrimination to ensure the fair development of competition has become even stronger.

As many commenters point out, the DPUC's proposal "is not only short-sighted, but will dictate its own conclusion that competition between wireless and wireline carriers is inconsequential."<sup>11</sup> Denying wireless carriers equitable access to numbers would inhibit their

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<sup>8</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996).

<sup>9</sup> Cf. Ad Hoc Committee Comments at 2.

<sup>10</sup> Id.; Texas PUC Comments at 4-5; Comments of the State Advocates in Support of Allowing an Area Code Overlay for Mobile Carriers at 9-11 (May 7, 1998) ("State Advocates Comments").

<sup>11</sup> See Comments of the Cellular Telecommunications Industry Association at 7 (May 7, 1998).

ability to offer service today, and their ability to compete with wireline service in the future.

This plainly is not an appropriate policy goal for the Commission to pursue.

The DPUC and its supporters also read out of the Commission's orders any discussion of the Commission's desire to avoid mechanisms that disproportionately burden wireless carriers regardless of the level of competition between the services.<sup>12</sup> The Commission recognized that it would not be fair or competitively neutral to place the entire burden of area code relief on the wireless industry, especially considering that wireless handsets must be reprogrammed -- a process that in almost all cases requires manual reprogramming of the equipment either directly by the customer service representative or by the customer (with direction from a customer service representative).<sup>13</sup>

In this regard, there is simply no basis for the Ad Hoc Committee's assertion that the costs and inconvenience of returning numbers is far greater in the context of wireline services than it is for wireless services. In the case of wireless-only overlays with take-backs, wireless subscribers have to incur the same costs as landline customers in terms of reprinting stationery and business cards, notifying friends and family, and revising signage, in addition to the considerable burden of reprogramming their handsets. Testimony given recently at a hearing in the Colorado 303 Area Code Relief Case, for example, established that:

- The vast majority of wireless carriers cannot convert phone numbers automatically over the air (with no manual intervention). US West: Leuck 3/26/98 Tr. at 88: 5-8, 97:3-22; Western Wireless: Forlenza 3/27/98 Tr. at 103:18-25; AWS: Cantrell 4/1/98 Tr. at 69: 12-22.

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<sup>12</sup> See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, 10 FCC Rcd 4596, 4608 ¶ 27 (1995).

<sup>13</sup> Id.

- Most wireless carriers require manual reprogramming of the equipment either directly by a customer service representative at a carrier location or by the customer (with the direction from a customer service representative over the phone). AWS: Cantrell 4/1/98 Tr. at 68:14-19.
- Some of these companies cannot walk their customers through the reprogramming process over the phone, instead requiring that all equipment be brought or mailed in for reprogramming. US West: Leuck 3/26/98 Tr. at 88:16-24; Western Wireless: Forlenza 3/27/98 Tr. at 103:18-25.
- This process takes a minimum of 15 minutes and may take up to four hours. US West: Leuck 3/26/98 Tr. at 88:25-89:16; AWS: Cantrell 4/1/98 Tr. at 71:6-10.
- Estimates given by carriers for a single NPA give-back of numbers included \$1.8 to \$2 million dollars (\$60-\$80 per phone) (US West: Leuck 3/26/98 Tr. at 101:9-25-102:1) and \$7 million (Joint Statement of Position of Sprint PCS and Western Wireless Corporation at 5-6). These figures do not include lost revenues. US West: Leuck 3/26/98 Tr. at 91:17-24.

As AT&T noted in its initial comments, these customer “inconveniences” result in enormous costs for the wireless industry in terms of lost business and goodwill.<sup>14</sup> Some customers may be unwilling to take the steps necessary to reprogram their handsets and would simply let their wireless service lapse. Others, who are required to take time out of their busy schedules to visit a customer service center and perhaps wait on line for hours, would not retain a positive view of their wireless providers. While wireless service is intended to make life easier for busy people, a wireless-only overlay would seriously undermine this marketing objective. Far from being a minor issue or “a matter of a few seconds,” the reprogramming of wireless phones imposes a significant cost on wireless companies and seriously inconveniences wireless customers in a way that far exceeds the burden on wireline customers in a geographic split, who have no equivalent telephone station reprogramming burden<sup>15</sup>

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<sup>14</sup> Comments of AT&T Wireless Services, Inc. at 9-10 (May 7, 1998) (“AT&T Comments”).

<sup>15</sup> Moreover, the burden imposed on wireless subscribers in the case of a wireless-only overlay is more significant than the burden imposed on wireless subscribers in the case of a geographic

There is also no basis for the statement of the Ad Hoc Committee and the State Advocates that a mobile subscriber's number is inconsequential to that subscriber.<sup>16</sup> Categories of wireless subscribers, particularly those who use the number for business or sales purposes, attach just as much value to their wireless phone numbers as do wireline subscribers. Just as with a wireline number, a wireless number is associated with a particular geographical area and imparts certain information to the calling party with regard to the potential for toll charges.<sup>17</sup>

## **II. THE GROWTH IN WIRELESS USAGE IS NOT THE MAJOR CAUSE OF NUMBER DEPLETION AND RELIEF PLANS AIMED SOLELY AT THE WIRELESS INDUSTRY WOULD BE SHORT LIVED**

Citing figures out of context and omitting relevant facts, the Ad Hoc Committee makes the ludicrous statement that "[c]ellular and other wireless service demand for telephone numbers is the single largest source of stress on the nation's stock of numbering resources."<sup>18</sup> This is simply untrue. The vast majority of assigned numbers today -- 79 percent -- are held by the wireline industry (66 percent by ILECs and 11 percent by CLECs). Wireless carriers have just 21 percent of the numbers.<sup>19</sup> Given that ILECs have been in business over 100 years, it should

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split. Although the reprogramming of wireless phones is also often required in the case of a geographic split, the number of customers affected is significantly smaller because only a portion of the customer base's numbers change with a split. In addition, wireless customers are part of a community-wide number change instead of being singled out because of their technology choice. Whereas customers derive a benefit from changing their wireless numbers in the case of a geographic split (because the new number is the same as their wireline number and is associated with an established geographic location), no such benefit flows from a change to a wireless-only area code.

<sup>16</sup> Ad Hoc Committee Comments at 10; State Advocates Comments at 11.

<sup>17</sup> In addition to the subscriber losing a number with geographic identity, the Omnipoint proposal for multi-MTA NPA overlays could result in the inability of carriers completing calls to wireless numbers to properly perform local versus toll discrimination and appropriately rate and route the calls. See Comments of Omnipoint Communications, Inc. (May 7, 1998).

<sup>18</sup> Ad Hoc Committee Comments at 2.

<sup>19</sup> Analysis of May 1998 Local Exchange Routing Guide ("LERG") data. In Connecticut, wireless carriers have even less than the national average of NXXs. See AT&T Comments at 12. (Based on a recalculation of the Connecticut LERG data, AT&T has determined that wireless

not be a surprise that the vast majority of numbering resources assigned nationally are assigned to ILECs. Similarly, it is reasonable that the wireless industry has more NXXs than CLECs: wireless carriers have been in business for 15 years, while CLECs only began to seek to offer local service approximately two years ago. In addition, the Ad Hoc Committee neglects to mention that since December 1997 (the date of the Ad Hoc Committee's number resource figures), the number of NXXs assigned to wireless carriers has increased by only seven percent, in contrast to a 41 percent rise in NXXs assigned to CLECs.<sup>20</sup> As the DPUC acknowledges, the potential exhaust of the Connecticut area codes is attributable to increased competition, which has "forc[ed] the opening of new NXXs for every new provider for every rate center."<sup>21</sup> CLECs, unlike wireless carriers, must obtain numbers in every rate center in an NPA -- sometimes literally hundreds of NXXs -- in order to compete throughout that NPA, and therefore are unable to use numbers as efficiently as wireless carriers. This problem could be greatly alleviated if state commissions ordered meaningful rate center consolidation instead of attempting to blame the wireless industry for number exhaust problems.

The Ad Hoc Committee goes on to state, again without any meaningful supporting data, that "wireless carriers are using NXXs even more inefficiently than other carriers."<sup>22</sup> This allegation is not only incorrect, it is contradicted by the very entities (and in reality the only

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carriers have approximately 17 percent of the assigned numbers as opposed to the 10-14 percent AT&T initially reported.)

<sup>20</sup> The Ad Hoc Committee does concede that "[i]n fact the demand for geographically fixed wireline access lines is stronger than ever." Ad Hoc Committee Comments at 2.

<sup>21</sup> Petition at 2.

<sup>22</sup> Ad Hoc Committee Comments at 5. Additionally, the Ad Hoc Committee referenced a CTIA estimate of 59 million cellular users, and attempted to compare that number to the NXXs assigned to wireless carriers per the LERG. The Ad Hoc Committee failed to specify, however, that the CTIA figure does not include paging, while the estimate of wireless NPA-NXXs used by the Ad Hoc Committee does.

entities) who have access to the carriers' proprietary utilization information, the state public service commissions. It is significant that the petitioner in this case, the State of Connecticut, which requested and presumably received number utilization data from all carriers in its state, has not alleged that wireless carriers are less efficient users of numbers. Moreover, the Texas PUC, while arguing in favor of a wireless-only overlay, admits that wireless carriers have "high number utilization rates," at least in populated metropolitan rate centers.<sup>23</sup> Wireless carriers' efficient number utilization was also confirmed by Colorado Commission trial staff in the recent Colorado 303 Area Code Relief Case. Based on his review of proprietary data, the staff witness stated that "wireless companies in the way that they can issue numbers have a greater efficiency of number utilization and a much higher utilization of numbers within each NXX code than a wireline provider who has to get an NXX code for every single rate center." Trial Staff: Armstrong 3/27 Tr. at 15:15-20.

Because wireless carriers are typically more efficient users of numbers than their wireline competitors, wireless carriers' inability to implement local number portability ("LNP") – and hence pooling – at this time would have little bearing on state number conservation efforts.<sup>24</sup> Moreover, the Commission should disregard the suggestion by some of the commenters that the wireless industry should, in effect, be punished because wireless LNP currently is technically infeasible. The Commission has recognized that wireless carriers have additional and difficult hurdles to overcome to accommodate both LNP and nationwide roaming and the allegations of

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<sup>23</sup> Texas PUC Comments at 7.

<sup>24</sup> While AT&T supports pooling for LNP capable carriers as a means to extend the life of NPAs and ensure more equitable access to numbering resources, LNP-based number conservation solutions will not obviate the need to implement new area code relief measures in order to ensure adequate numbering resources to meet the public's demand for telecommunications services of all types.

some parties that wireless carriers have made a purely economic decision not to comply with the wireless LNP deadline is unsubstantiated. Contrary to the Ad Hoc Committee's statement, vendors do not have the necessary wireless LNP software available, and all necessary network, billing, and customer support system updates and modifications to support the wireless LNP solution in its entirety have not been detailed adequately to complete design and development.<sup>25</sup> Finally, when weighing the costs and benefits of a wireless-only overlay, the Commission must examine the estimated duration of relief such a plan would provide. While some states clearly want quick fixes, a small Band-Aid on a gaping wound would just delay by a short time the necessary surgery. As the Texas PUC acknowledges, a wireless overlay with number take-backs in its state would extend its Houston codes by only a year.<sup>26</sup> It would make no sense to disrupt an entire industry -- as well as the development of wireless-wireline competition and the substantial benefits that such competition will bring -- for such minimal benefit.<sup>27</sup>

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<sup>25</sup> See Telephone Number Portability, CC Docket No. 95-116, Comments of AT&T Wireless Services, Inc. (filed Jan. 9, 1998).

<sup>26</sup> Texas PUC Comments at 2-3.

<sup>27</sup> While facially more equitable, Bell Atlantic's proposal that the Commission permit wireless overlays without take backs would plainly have even less effect on a state's effort to conserve numbers. See Comments of Bell Atlantic at 7 (May 7, 1997).

## CONCLUSION

For the foregoing reasons, AT&T respectfully urges the Commission to deny the DPUC's Petition to implement a wireless-only overlay in Connecticut. The Commission should also emphasize that similar requests made in the future by the DPUC or other parties will be summarily rejected.

Respectfully submitted,


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## CERTIFICATE OF SERVICE

I, Tanya T. Butler, hereby certify that a copy of the foregoing "Reply Comments of AT&T Wireless Services, Inc." were filed by first class-postage prepaid mail, or by hand(\*) on this 18<sup>th</sup> day of May, 1998 to the following:



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